In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1481

TERMINAL FREIGHT COOPERATIVE ASSOCIATION and TERMINAL FREIGHT HANDLING CO., PETITIONERS

v.

BERNARD SAMOFF, Regional Director of the Fourth Region of the NATIONAL LABOR RELATIONS BOARD, *et al.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE REGIONAL DIRECTOR IN OPPOSITION

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1. Petitioners filed a charge with the Regional Director of the National Labor Relations Board alleging that the respondent Union was engaging in a secondary boycott in violation of Section 8(b)(4)(B) (29 U.S.C. 158(b)(4)(B)) of the National Labor Relations Act. Upon determining that a complaint should issue on the charge, the Regional Director petitioned

the United States District Court for the Eastern District of Pennsylvania for an injunction pursuant to Section 10(l) (29 U.S.C. 160(l)) of the Act, and also obtained a temporary restraining order enjoining the Union's alleged secondary activity. Before the date set for hearing on the injunction petition, the Regional Director and the Union entered into a stipulation providing for a cessation of the Union's alleged secondary activity pending a final determination by the Board. The stipulation further provided that, in the event its terms were violated, the temporary restraining order previously issued would be reinstated. The district court issued an order approving the stipulation over the objections of the charging parties. (Pet. App. 4A-6A.)[1] The charging parties appealed this order to the court of appeals; but, meanwhile, the underlying dispute was settled through execution of a collective bargaining agreement between the Union and the employer with whom it had its primary dispute. For this reason, the court below dismissed the appeal. (Pet. App. 1A-3A.)

2. The question presented—concerning the right of a charging party in a Section 10(l) proceeding to appeal from the district court's refusal (in which the Regional Director has acquiesced) to issue an injunction—does not warrant review in this case. Pursuant to the stipulation approved by the district court, the

[1] The charging parties objected on the ground that the stipulation provided inadequate relief and protection. The district court overruled the objection, after affording the charging parties an opportunity to present their views in a conference held in chambers. (Pet. 6-7.)

Union's secondary activity has ceased. The dispute which gave rise to that activity has been resolved through the execution of a three-year collective bargaining agreement between the Union and the primary employer. Moreover, the underlying Board proceeding will, in all probability, shortly be closed, since an informal settlement agreement has been approved by both the Regional Director and the General Counsel (Pet. 19-20),[2] and all that remains is for the Union to complete the notice-posting requirement. In these circumstances, the case is not an appropriate one in which to review the issue which petitioners raise. See *Sears, Roebuck & Co.* v. *Carpet Layers, Local 419*, No. 476, this Term, decided April 27, 1970; cf. *McLeod* v. *General Electric Co.*, 385 U.S. 533.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

ARNOLD ORDMAN,
General Counsel,
National Labor Relations Board.

MAY 1970.

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[2] Petitioner's appeal to the Board (Pet. 20) has been dismissed on the ground that the Board lacks jurisdiction to review the General Counsel's acceptance of the settlement.

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